8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

their own affairs and the success with which their courts now deal with matters of criminal responsibility is a tribute to their growing appreciation of the need for internal security. I mention this with some feeling because in those early days it was a real struggle to resist the endless demands of individual Nuer for assistance over civil claims, a most trying experience which every District Commissioner who has served in the area knows. Nevertheless, at the present stage of development and perhaps for some years to come, the appeal from these courts is to the District Commissioner and the Governor of the Province. This being so, a knowledge of the basic principles of Nuer law is essential. It is necessary not only in connexion with specific cases, but also for the direction of policy in the development of the courts themselves. This need will continue even in the changing circumstances of the Sudan as a country whatever the nature of its constitution, and this book is written to meet it, as well as to record the evolution of a system of law.

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It is sometimes argued that a government official, especially one with the executive powers of a District Commissioner in an undeveloped area, is an unsuitable person to carry out an investigation of this sort. His position may discourage sincere and truthful answers to his questions. I am aware of this argument and am prepared to accept the criticisms which may follow. Anyone who knows the close and positively wearing relationship of intimacy which exists between Nuer and their District Commissioners will, however, realize that the latter have many advantages. Having heard the details of a Nuer dispute over rights in cattle, and the same sort of dispute over and over again, he can get a pretty shrewd appreciation of the merits of the case and of the principles of law involved. Moreover, though the Nuer have a proper respect for the authority of their District Commissioner, no one could argue that this in any way curbs their blunt methods of expressing approval of his decisions, or more often disapproval. The relationship between the District Commissioner and the Nuer is peculiar and perhaps unique. He becomes a tribal institution adapted by the Nuer themselves to meet their own needs in rapidly changing conditions. He is addressed by his 'bull-name', [351] granted as an intimate by men and women of all ages, praised, but often severely criticized, by the chiefs. A Nuer 'bull-name' is a passport to the most intimate circles in any Nuer cattle camp or village. I often felt that it was I who had to struggle to maintain at least a vestige of the culture from which I had come.

In cases where my opinion was sought it is true that both sides would try to mislead me both on the principles of law and on the facts. I was fully aware of this. This approach did not apply to me alone; in nearly all legal disputes it takes a most exhausting process of interrogation amid a battery of lies before the truth is reached, for 691

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

such is the technique of litigation in Nuerland. This is a necessary opening and not considered reprehensible in the circumstances; in other ways the Nuer are a surprisingly truthful people. It is thought fair tactics for the defendant in a civil case to throw out a screen of fabrications before giving way to the force of public opinion vested in the court, or, as is often the case, reaching some satisfactory compromise. A man must abandon the struggle only when a sufficient flow of ingenious argument has satisfied his honour. This procedure is not even confined to actions in the courts. The negotiations which take place over the payment of bridewealth, for example, are a battle of wits. The Nuer speak of it as a battle (*bar*) and regard it as one of the most exhausting trials of their lives. The idea of a battle is carried into the courts with vigour and in some respects the Nuer regard litigation as a stimulating pastime. The number of cases instituted without any hope of success is enormous, and even the deterrents applied by the Administration have not achieved any substantial reduction.

The sources of my information are therefore from the courts themselves; a close analysis of several thousands of actual cases. These were recorded when I acted as clerk to the appeal courts, or taken from court records. I had the benefit of Professor Evans-Pritchard's account of the social structure and political institutions of the Nuer[1] and more recently his writings on kinship and marriage.[2] In fact he has mentioned, though not always in detail or in the same context, nearly all the subjects recorded in this Manual and since I have rarely had occasion to disagree with the facts or his interpretation, much may appear merely repetitive. My work in the field, however, was carried out independently and largely among different Nuer tribes. Moreover his observations were made of the Nuer as they were some twenty years ago, and since then there have been many profound changes as the result of administrative action. This is especially true in the sphere of customary law. Further, it has been my object to describe only those aspects of Nuer life which are more or less concerned with disputes heard by Nuer courts, though it is obviously difficult to isolate specific aspects from the general background.

This Manual of Nuer Law is not a code or a text-book in which the precise answer to any legal situation may be found. The fine and now rapidly changing distinction between law, custom, convention, and usage will not allow any such precise description. It is rather a study of basic principles as they are now, exemplified by actual examples, as well as a study of a most complex system of law in the process of development. It is, however, primarily intended for the administrator.

[1] *The Nuer*. Oxford, 1940.

[2] In a series of articles and now in *Kinship and Marriage among the Nuer*. Oxford, 1951.

8:Howell E.G-5 (1942-1944)1954
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CHAPTER III

MARRIAGE AND DIVORCE

PART I
MARRIAGE AND MARRIAGE LAWS

1. INTRODUCTION

The Functions of Bridewealth

THE majority of legal disputes which are brought before a Nuer court concern marriage relationships, matters arising out of marriage, claims to a share in bridewealth cattle or a return of bridewealth cattle if the marriage is dissolved. Cattle provide a legal symbol which runs through the whole structure of kinship and marital relationships. A thorough understanding of marriage, the bridewealth system, and rights in cattle raised by kinship is essential to a study of customary law administered in the courts.

The test of legality in all Nuer marriages is found in the transference of bridewealth cattle from the bridegroom and his kinship group on the one hand, to the legal parent or guardian of the bride and his kinship group on the other. The main functions of bridewealth are as follows:

(i) It supplies a material symbol which legalizes the union of man and woman and establishes the legitimacy of the children of the union and their lawful inheritance.

(ii) It gives emphasis and legality to the conventions and patterns of behaviour and the reciprocal obligations which are raised between the kinship groups concerned and must be observed if the union is to be successful.

(iii) It gives stability to the union, particularly in the initial stages when it has not been confirmed and fortified by the birth of children who will subsequently form a link between the lineages concerned.

(iv) To some extent it stands as security for the good behaviour of the wife in her new home and for the observance of her marital duties towards her husband and his kin. It will be in the interests of her kinsmen to encourage her in this matter because her husband can demand his cattle back and dissolve the union. In this they may sustain no loss since the woman can be married again, but it will certainly cause them inconvenience, especially if the bridewealth

8:Howell E, G-5 (1942-1944)1954
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are often stable. Moreover it is not usual for the wife's family to press for further payments provided the union is confirmed by the birth of children. It is not, therefore, necessarily the number of cattle paid or the fact that sufficient have been paid to meet the minimum claims which makes a marriage stable, but the social relationship of the two families concerned. In examining the legality of a marriage, a Nuer court may ascertain generally the number of cattle transferred, but will not examine each of the many claims. The most telling evidence in this respect is the performance of the marriage ceremonies, for it is assumed that performance indicates the acceptance of the bride's family and this implies that they have been satisfied in the matter of bridewealth cattle.

Disputes over Bridewealth Payments and Distribution

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Disputes over bridewealth between the bridegroom and the bride's family do not often arise. Even if the bridegroom does not pay all the cattle required to meet the claims made at the time of marriage, but promises to do so later and then fails, the bride's family can always threaten a divorce which is usually a sanction strong enough to ensure payment. The claims of the *ji cuongni rar* are usually met first, and if any cattle are forgone or postponed, it is by arrangement with the immediate family of the bride. Moreover claims made by the *ji cuongni* will be against the bride's immediate kinsmen, not against her husband, for the distribution of bridewealth among his wife's family is not his direct concern.

The rules of distribution apply within the group of the wife. These are collectively referred to by the husband as *ji tmac* ('people of the skin', or relatives-in-law). Further rules govern the distribution between the father's lineage and the mother's lineage and then lineages brought in by other marital relationships. Disputes over these claims are common, and there is an unfortunate tendency to use the courts as a sanction for the fulfilment of kinship obligations. The majority, however, are settled by the elders of the lineages concerned, and the courts often dismiss such cases as *tmac ciang*, 'home talk', which should be settled within the kinship group.

There may be more than one person standing in a special relationship to the bride which carries with it a claim to part of her bridewealth, and if this is so there is always a tendency to alternate. If a man fails to get cattle on the marriage of one of the daughters, he will expect to do so on the marriage of her sister. Disputes sometimes arise, especially over claims that have remained unpaid in the second generation. Such matters are strictly speaking governed by the rules of inheritance, but so far as cattle are concerned, the rules of distribution are part of inheritance. Two examples are quoted below. Both are typical, and it will be noted that the first was dismissed by the

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

court on the grounds that the claim was too old to be valid, the second on the grounds that the dispute was purely an intimate family concern.

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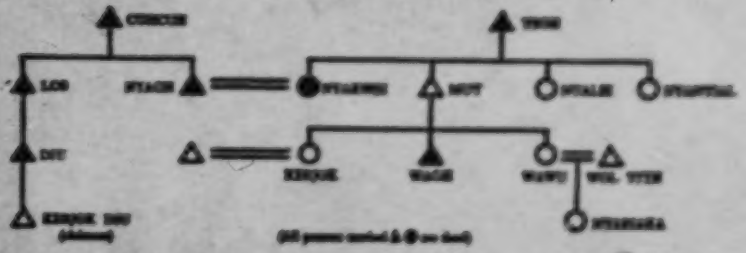
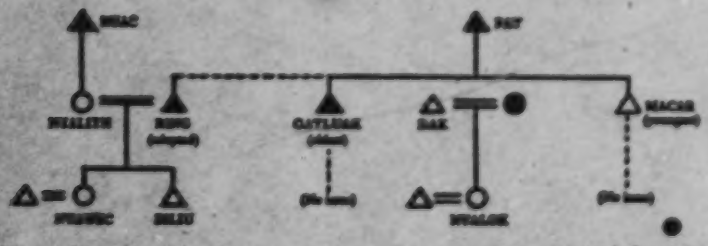
Dispute between family of Cukuk and family of Yegh
(Gaawar Nuer Case)



Nyakwei, daughter of Yegh, was married by Nyagh, son of Cukuk. Nyakwei died without issue, but there was no dissolution of marriage, Nyagh being content to leave his cattle with Yegh's family. Nyagh, as Nyakwei's husband, would, according to the laws of distribution of bridewealth, be entitled to claim a *yang nuaa* (cow of the paternal aunt) on the marriage of any of Mut's daughters. In fact the *yang nuaa* of Kerjok's marriage went to Nyalei and that of Wawu to Nyanyial. Mut promised to give Nyagh the *yang nuaa* of Wagh's marriage, but it was not paid at the time of her marriage, and she died shortly afterwards. Kerjok Diu as heir to Nyagh (brother's son's son) then claimed *yang nuaa* on the marriage of Wawu's daughter Nyariaka, on the grounds that it should go to Wagh, whose own *yang nuaa* should have gone to Nyagh through Nyakwei.

The court was at first puzzled by this case, and said that the *nuaa* of Nyariaka should go to Wagh's husband. Kerjok Diu then produced evidence that Wagh's marriage had been dissolved as she had died without issue, and pointed out that her sister Kerjok had already received a *yang nuaa* on the marriage of another of Wawu's daughters. The court was unable to give an exact definition of the law in these circumstances, but dismissed Kerjok Diu's claim on the grounds that it was based on a claim which had not been fulfilled in the time of his grandfather and that his claim had therefore lapsed.

Nyalith Ruac v. *Macar Pat* (*Lak Nuer Case*)



Pat had four sons—Ring (an adopted Dinka), Gathuk (the eldest or *kaagk*), Duk (the middle son, or *dar*) and Macar (the youngest or *pagh*).[1] On the

[1] For further explanation of these terms of seniority, see p. 191.

8:Howell E, G-5 (1942-1944);954
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583 691. marriage of Dak's daughter Nyalok, Mazar got a cow (*yang nampuot*) and a cow-calf (*guandow*). Ring was by that time dead, but his wife Nyalith received the remainder of the *guandow* cattle—the cattle of the paternal uncle—on behalf of her son Bilio, then a minor: a cow, an ox and a bull-calf. On the marriage of Ring's daughter Nyawut, the *gluk guandow*—a cow—and the *nampuot*—a cow-calf—were given to Mazar again as heir to Gatluak, then dead with no issue. Dak objected to this and, as a payment, seized the cattle held by Nyalith (received on the marriage of Nyalok) for her son. Nyalith then took the matter to court and demanded the transfer of the cattle received by Mazar on the marriage of Nyawut, to Dak, so that Dak would give her back her cattle. Court discussed the case on the grounds that—

(i) Mazar, as heir to Gatluak, has a right to the *nampuot* and *guandow* of Nyalok. Dak cannot receive these cattle for the marriage of his own daughter.
(ii) The dispute is strictly between Nyalith and Dak.
But (iii) it is a purely family matter which they must settle themselves, because Nyalith is living with Dak in levirate union, he has no male heirs, and all his cattle will anyway go to Bilio to whom Dak is paternal uncle.

6. THE LEGALITY OF MARRIAGE

General Principles

583 581 From an analysis of the social and ritual processes of marriage and of the transfer of bridewealth cattle from one group to another, there emerge certain legal principles which are relevant to a study of Nuer law as administered in the courts today:

(i) Apart from the social and ritual processes, the performance of which not only gives stability to marriage but emphasizes the degree of agreement reached at any stage, the key to the legality of a union lies in the transfer of cattle from one kinship group to another on behalf of an individual. The individual thereby obtains rights in his wife which are domestic, economic, and procreative. Even though these are sometimes assumed so far as domestic and economic rights are concerned, they are never assumed in situations where the legal status of the children is concerned unless cattle have been transferred.

(ii) Therefore, in any disputes which concern bridewealth, the return of bridewealth, or rights in the distribution of bridewealth, reference must be made to the individual on whose behalf cattle were transferred. Whether he be alive or dead, he is the nuclear point from which legal discussion must start, and the rights of others are determined by their relationship to him in the kinship structure or the relationship created by marriage. At a later stage, when children are born of the union, all parties concerned become linked through the position of the children in the kinship structure of both sides.

We have seen that, although marriage is still precarious and does not necessarily achieve a high degree of stability until a child is born of the union and the bride takes up her abode permanently with her

8;Howell E. G-5 (1942-1944)1954
FJ22 Nuer FJ22

in such matters is not always consistent and certainly not equally effective. Moreover there is still everywhere a reluctance to give anything in the nature of a judgement. In many disputes, where the rights of one or other of the disputants are abundantly clear, a rapid and clear-cut decision might be expected. This is rarely forthcoming. Argument swings from one side to another during the course of the proceedings until agreement is reached. When a compromise is not reached to the satisfaction of both complainant and defendant, although the decision is recorded in the court registers, execution is often avoided even though the guilty party is well able to pay the cattle demanded. More often still an appeal is lodged. A dispute frequently passes through all possible stages of litigation; from preliminary negotiations, in which the elders of the community may be consulted, to appearance before the tribal court, to appeal court.[1] Even then there are many instances where attempts are made to bring the same case again and again. This lack of finality is a distinct characteristic of Nuer litigation.

Nevertheless, the general and most obvious effect of administration in the form and application of what we may now call Nuer law is, as already stated, on its relativity. Here we must make a further distinction, because Nuer courts are in fact operating in two different ways. In the first place they are upholding a network of positive obligations inherent in the social system, and in this sense they are becoming more and more the sole mechanism through which the social system is maintained. In the second place they are the means through which definite legal wrongs are righted. A man who does not fulfil a particular duty towards a kinsman may now be brought before the courts in just the same way as one who has infringed a specific right. More and more of what can only be described as custom, convention, or even usage finds its way into the arena of the courts and is applied as law. Evidence of this may be seen in the growing amount of litigation which appears before the courts. The Nuer are pressing, through this means, claims for the fulfilment of obligations which were not in the past normally subjects of dispute at all. There is another reason for this increase in litigation. Paradoxically enough, although there is now greater certainty of obtaining redress through the agency of the courts, the sanctions which in the past made for greater conformity with accepted patterns of behaviour, have themselves been modified by the very existence of the court system, which aims at the maintenance of public security. These sanctions, as we have seen, were principally retaliatory. For example, a man may nowadays commit adultery with another man's wife with the knowledge that he will at least escape death or severe injury at the hands of her husband, even though he knows that detection will almost

[1] Branch and Main Courts. See Appendix II.

Bidwell E, G-5 (1942-1944)1954
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692 681 certainly mean that he will be called upon to pay compensation and forced to comply. In the past there was no certainty that he would be compelled to pay compensation, but there was always present a real danger of vindictive retaliation, and the latter sanction appears to have been more effective in the past than the former is in the present. For this reason adultery is a more common offence than it was, or so the Nuer say, and here again there is an increase in litigation.

692 177 691 We find, then, that the establishment of the courts, though in one sense preserving the social system from complete breakdown, is in another sense contributing to social maladjustment. Moreover the establishment of courts with powers of coercion behind them tends to stimulate litigation because the courts provide a mechanism through which claims may be pressed which, by reason of the social or spatial distance between the parties concerned, would formerly have had little or no chance of success. In other words, claims in the courts receive the sanction of alien authority which has a wider range than the sanctions which previously made for their fulfilment. The relativity of application is now fast disappearing. We find at one end of the scale increased litigation due to the enforcement of claims which in the past could have had no legal reality. At the other end of the scale we find the modification of sanctions which in the past would have ensured unquestioned fulfilment of reciprocal obligations; a modification which leads to social disintegration of which increased litigation is a symptom. In the first place the Nuer are bringing before the courts actions which previously would have stood no chance of settlement. In the second place the obligations of social existence are more and more maintained only by direct action through the courts. The problem of increasing litigation is a serious one. It is one of the basic problems of administration among the Nuer.

'Balanced Opposition' in the Court System

621 In the past each social unit of Nuerland existed largely in opposition to other units. The need for common defence, mutual co-operation, and collective enterprise in economic activities were the principal factors which maintained the identity of territorial groupings, the relation between the territorial and political aspects being expressed in kinship terms. Each tribe, each tribal segment, each local community, was identified with a dominant clan or lineage. These formed the nucleus of groups of people not otherwise related, and links were forged between them on a kinship analogy. Such cohesion, which was not in any case constant, was therefore the result of the intersection of several factors. Although the Nuer were involved in aggressive warfare with the Dinka during the period of their expansion westwards in the last century, it is clear that tribal segments

14: Huffman M-5 (no date) 1931
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must be heated in the late afternoon for the baby's bath. It is no short process. (Fig. 11)

A MAN'S WORK

A man's work usually begins at sunrise too. He has probably slept in the barn. He arises, covered with cow-manure ashes. He cleans his teeth with the ash and later on in the morning may wash his face and hands. While he may drink a large quantity of water during the day he seldom drinks any water before breakfast or with a meal. He usually stays among the cattle until he is called to his breakfast about nine o'clock. Then he eats and is ready to spend the day among the cattle. He takes them out to graze about ten o'clock in the morning and returns with them in the late afternoon. He loves his cattle. His day is a happy one spent in their midst, his human companions being other men who have taken their cattle out to graze also. His spear and club are ever with him. In the late afternoon he comes home with his cattle, finding his supper is being prepared. A plunge in the river every time he goes to it refreshes him. After supper is over visiting until bedtime is the usual close of the work of the average day.

The day's work may be varied if any of his cattle are sick or if there is a dance which he wishes to attend. Or maybe the District Commissioner is in the village hearing cases or collecting taxes, and so he joins the throng and spends his day listening to the cases or bringing up some case of his own before this representative of the Government.

During the planting season, the fishing season, or the season when the dura must be cut, this daily programme of the Nuer man differs and his work for the day may be a little more strenuous.

15: Butt E-4 (No date) 1952 F 322 Nuer F 321

ashes from it are smeared over the body. Cattle urine is used in churning and cheese-making and also for washing. Evans-Pritchard rightly calls the Nuer 'parasites of the cow'.(1)

The social importance of cattle among the Nuer

The fact that cattle have more than an economic value may be amply illustrated from the part they play in social life.

Relationships with neighbouring tribal groups are partly dependent on the value attached to cattle. The Nuer are contemptuous of those who have no cattle, while they raid those who have in order that they may augment their own herds. A man will defend his cattle to the last and will die for the sake of the herds. Disputes within the Nuer tribe are often about cattle and about the ownership of pastures and water supplies necessary for their well-being. Cattle are paid in compensation for homicide and injury. It is the needs of the cattle which compel the yearly dry-season migration to fresh pastures.

Cattle form the bridewealth of the Nuer, that is, the successive transfers of cattle from the bridegroom's family to that of the bride marking the fact of marriage. Cattle are farmed out among friends as a precaution against the total destruction of a herd by disease; thus they tend to consolidate friendships and to maintain the network of relationships between people within a village and between the inhabitants of separate villages.

Family relationships are expressed in terms of cattle, so are the rules of incest and the status of an individual. Men take 'ox-names' - names which refer to the colour or other peculiarities of their favourite animals. In ritual cattle play an important part; they are sacrificed to the spirits and, when he desires to establish contact with ghosts and spirits, a man rubs ashes along the back of an animal, invoking the ancestral spirits as he does so. Cows are dedicated to the totemic spirits and the sky spirits. Daily life revolves round the needs of cattle; Nuer think cattle and talk cattle. Oxen are valued for display and prestige, and the merits of their favourite beasts are boasted of by their owners. Nuer language is rich in terms describing the various attributes of cattle. Tassels, decorations and carved tethering pegs are made by the owners, while the favourites in the herd will be played with, sung to and have poems made up about them. Young men will get boys to lead their favourite ox round the village for all to admire and will themselves leap behind it. Among the Nuer there is scarcely any aspect of life into which cattle do not enter and play an important part. Evans-Pritchard writes that the Nuer define all social processes and relationships in terms of cattle and that their social idiom is a bovine idiom.

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(1) Evans-Pritchard, *The Nuer*, 1940, p.38.